

October 31, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON THRESHOLD DETERMINATION APPEAL

SUBJECT: Department of Development and Environmental Services File No. **B00M0154**

CLASSIC HELICOPTER
SEPA Threshold Determination Appeal

Location: 6505 Perimeter Road, Boeing Field

Applicant: Classic Helicopter, *represented by*
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Deny the appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	October 19, 2000
Hearing Closed:	October 24, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Noise impacts
- Project piecemealing

SUMMARY:

The appeal of the threshold determination is denied.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On June 20, 2000 a Determination of Non-significance (DNS) was issued under SEPA for the Classic Helicopter Corporation proposal to construct a 19,190 square foot hangar and 11,747 square foot office facility on a leasehold parcel located at the northeast end of the King County International Airport. The parcel covers approximately 56,000 square feet and lies south of and adjacent to an existing Classic Helicopter leasehold that is approximately twice as large and contains an existing hangar and office building completed in 1994. The new hangar will be used primarily for storage of privately owned aircraft, some of which are presently housed within the existing Classic hangar. No maintenance, charter business or flight training operations will be operated from the new hangar.
2. A timely appeal of the threshold determination was filed by the Seattle Council on Airport Affairs. The appeal statement raised issues with respect to drainage, groundwater pollution, noise, cumulative project impacts and project piecemealing. A petition to intervene in the proceeding was filed by the King County International Airport and granted by the Hearing

Examiner at a pre-hearing conference held on September 6, 2000. Also, at the pre-hearing conference the Applicant stipulated to a condition to test site soils for contamination and agreed to perform a project noise study based on a reasonable worst-case scenario.

3. The Applicant filed a pre-hearing motion to dismiss all issues from the appeal except those relating to noise. The Hearing Examiner ruled on this motion within an order issued October 3, 2000, dismissing the groundwater pollution and drainage issues from the appeal and limiting the project piecemealing issue to “whether the utilities and support improvements proposed to be authorized under the Master Plan Update [for KCIA] are necessary for implementation of the projected expansion of the Classic Helicopter site, and whether aviation facilities and activities proposed by the Applicant for the Classic Helicopter site are inconsistent with the existing Master Plan and therefore can go forward only after a Master Plan Update has been approved.” The order also limited the cumulative impact issues to those associated with noise and piecemealing.
4. The Applicant has submitted a noise study based on a reasonable worst-case scenario in the form of a report prepared by Michael R. Yantis Associates and Airside. The noise study assumes that 9 new helicopters of the loudest variety currently housed at the Classic facility will be located in the new hangar and make 2 round-trip flights per day, all in a northerly direction. Based on this scenario the report predicts a noise increase of 0.54 DNL within the 65 DNL contour for the airport, and an increase of 0.18 DNL within the 70 DNL contour. These figures are both well beneath the 1.5 DNL increase that the FAA has identified as denoting a significant noise impact.
5. The Appellant has challenged the reasonable worst-case scenario offered by the Applicant’s report in a number of respects. These include a contention that the existing Master Plan allows larger and noisier aircraft to be employed in this part of the airport and that this greater theoretical maximum should be employed for the worst-case scenario; that the Agusta 109-E chosen as the worst-case scenario aircraft should be replaced by a noisier but similarly-sized EuroCopter BK-117C1; that the Applicant’s report ignores take-off and approach noise metrics in favor of simply a fly-over measurement; that the scenario excludes night operations and westerly flight paths, both of which could increase the level of noise impacts; that the new facility could be used for the storage of Stage II fixed-wing aircraft with louder noise metrics; and that the number of helicopters that could be stored in the new facility has been understated by at least three aircraft.
6. Our view is that the worst-case scenario employed by the Applicant’s noise study was based on defensible assumptions. It was reasonable to project worst-case conditions based on use patterns within the existing Classic facility. The record offers no basis for concluding that the new Classic development will be operated in a manner radically different from the existing facility, and therefore speculations about worst-case impacts of a nature completely unrelated to current operations do not represent a realistic prediction of future activity. The composition of the projected Classic Helicopter hangar storage inventory is reasonable as to sound generation if it assumes the existence of aircraft with noise characteristics at the upper end of the existing fleet.
7. With respect to the Appellant’s remaining allegations, excluding take-off and approach operations is justified by the fact that such operations will occur within the boundaries of the airport itself and will not impact neighboring residences. Neighboring residences will be subjected to fly-over

operations only. The Appellant suggested a higher percentage of nighttime operations for the facility but provided no evidence to support its premise. The Appellant is correct in asserting that more than nine helicopters could fit into the new hangar space if it were crammed to capacity. But if such an assumption were made, it would be necessary at the same time to lower the number of daily flight operations projected. For two round trip operations per aircraft per day to be entertained as a realistic assumption, relatively convenient access to and from the hangar facility must also be assumed. Use of a higher storage factor would be reasonable only if one hypothesizes a simultaneous reduction in the number of daily flight operations.

8. The Applicant's noise study also contains a single-event comparison between helicopters sited at the existing Classic facility and the noise levels attributable to Stage III fixed-wing aircraft. The report asserts that since both the L-max and SEL for typical helicopters in use at the Classic facility fall below comparable values for Stage III aircraft, no basis exists for concluding that single helicopter flights from the facility would result in noise events of such loudness that they would merit independent evaluation outside the scope of the 24-hour DNL metrics. This assertion is intuitively apparent and was not challenged by the Appellant.
9. The Appellant's piecemealing allegation can only be sustained upon a demonstration that the Classic Helicopter proposal is so closely related to the airport's Master Plan Update that it is, in effect, a single course of action requiring evaluation within a single environmental document. As applied to these facts, this proposition has two components. First, is the Classic Helicopter proposal so dependent on facility improvements contained within the Master Plan Update that it cannot proceed unless these new facilities are constructed simultaneously? Second, is the Classic Helicopter proposal so clearly at odds with the existing Master Plan that its approval can be justified only if a Master Plan Update is adopted that authorizes its uses?
10. On the first issue, the Appellant's position is that the capital infrastructure improvement program outlined in Master Plan Update Working Paper No. 3 identifies infrastructure facilities that are essential to the construction and operation of the Classic Helicopter facility. As explained by Mr. Rees at the SEPA hearing, "the proposed CHC facility is a \$2.5 million hangar and office space on vacant land, that requires new power, water and sewage/drainage services."
11. While the Working Paper No. 3 phasing program does identify new utility development as a component of the proposed Update process, there is no evidence whatsoever that the Classic Helicopter proposal will not be able to go forward without prior construction of these facilities. In point of fact, utility service certificates have been issued to the project, and the site's new state-of-the-art drainage facilities will likely reduce stormwater impacts. Moreover, Working Paper No. 3 itself only identifies utilities planning as occurring within the first five years of the plan, with actual utility construction taking place beginning in the sixth year. In the absence of evidence indicating the existence of a current utility crisis for the airport or its environs, the suggestion that the minor increase in utility usage represented by the Classic proposal cannot go forward independent of the Master Plan Update process is not credible.
12. The question of whether the Classic Helicopter expansion is consistent with the 1986 Airport Master Plan is somewhat more interesting. As the parties have noted, the Master Plan explored three development scenarios and chose the third as its recommended alternative. The plan states that "this alternative will provide greater flexibility in facility development and balance the needs

of the airport users. The alternative preserves the east central area for large aircraft users and in air cargo operations, while areas such as the northeast are preserved for basing of smaller aircraft.”

Mr. Rees correctly points out that if one looks at the specific facility plans for Alternative No. 3 in the area where the Classic Helicopter facility is located, one finds a proposal to replace older dilapidated t-hangars with similar, new t-hangar units designed to accommodate fixed-wing single and twin-engine aircraft. Since the Master Plan treatment of Alternative No. 3 for the northeast portion of the airport makes no mention of helicopters, Mr. Rees argued that the placement of helicopter facilities in this location is inconsistent with Master Plan requirements.

13. The Master Plan itself contains few references to helicopter facilities. The principal discussion occurs in Chapter 7 and consists of the following:

“Helicopter operating areas and procedures at BFI should be re-evaluated continually to provide a safe, controlled environment for the forecast growth in helicopter activity.

“Because of the various locations of helicopter operators on the field, placing all helicopter operations into one area of the airport would not be practical. Currently there are five designated helicopter landing areas. It is assumed that helicopter operations will remain in these areas.”

14. Finally, the question arises as to what the precise legal effect of the Master Plan is and whether strict compliance with its terms is legally required. On this question, Chapter 1 of the Master Plan offers the following disclaimer:

“It should be emphasized, however, that neither this Master Development Plan nor any other planning document can anticipate all needs or eventualities, even in the near term. It is intended as a management tool, not as a substitute. Management must have the flexibility and authority to exercise informed judgment in decision-making as changing conditions require.”

15. In this regard it is also significant, as argued by KCIA in its closing brief, that the 1986 Master Plan was adopted by the County Council by motion rather than ordinance:

“The 1986 Master Plan is not akin to a binding zoning regulation or a comprehensive plan under the Growth Management Act, either of which could preclude inconsistent development unless amended. In contrast to a zoning regulation or comprehensive plan, the 1986 Master Plan was not adopted by ordinance. Rather, the Council merely passed a motion approving the plan....Having only been approved by motion, the plan does not have the force of law. King County Charter, Article II, Sections 240 and 220. Accordingly, Applicant’s project is not dependent upon amendment or update of the 1986 Master Plan, even if the project were found to be inconsistent...”

16. While we are not prepared to conclude that the Master Plan can be ignored entirely in making siting decisions for private facilities, it is clear from both the Plan text itself and the manner of its

Council adoption that strict compliance with its terms was neither intended nor required. Such being the case, the question becomes focused on whether the Plan's function is compromised or undermined by the siting decision under review to such an extent that the essential purposes of the Plan are impaired. In reviewing this issue it is sufficient to note that the fundamental logic of the Plan is to separate large from small aircraft operations and to fit in rotor aircraft operations at peripheral locations where they will not conflict with fixed-wing flight patterns.

17. The location of the Classic facility respects these basic Master Plan considerations. Small private helicopters are grouped with other smaller aircraft in a location near the north end of the airport where easy access to the I-5 corridor can be achieved. This allows nearly all rotor aircraft operations from the Classic site to occur east of the airport runway and avoid fixed-wing flight path conflicts. This is consistent with the Master Plan intent to intersperse helicopter facilities in locations where workable opportunities arise and interference with fixed-wing operations can be avoided.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of the Classic Helicopter proposal. The Appellant has not met its burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.
3. The Applicant's noise study represents a reasonable worst-case scenario for the analysis of noise impacts from the Classic Helicopter proposal. The increase in noise attributable to this proposal will be below all applicable standards recognized as identifying a significant increase in noise impacts. Therefore, the impact of the Classic Helicopter proposal on the neighborhood noise environment must be regarded as less than significant.
4. The 1986 King County Airport Master Plan is not a zoning regulation or community plan requiring strict compliance. The northeast portion of the airport property has been designated within the Master Plan for small general aviation use, and the type of aircraft proposed to be located at the Classic facility is consistent with that designation.
5. There is no evidence that the utility infrastructure improvements contemplated by the proposed Master Plan Update are necessary for the implementation of the Classic Helicopter proposal.
6. The King County Master Plan Update and the Classic Helicopter proposal are not related to one another so closely that they must be regarded as in effect a single course of action to be evaluated within the same environmental document.

7. In the absence of evidence of significant adverse environmental impacts attributable to the Classic Helicopter's proposal, issues of cumulative impacts are not reached.
8. Based on the record, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record, and assures that there is no probability of significant adverse environmental impacts.
9. As stipulated by the Applicant, a requirement for soils testing is appended to this decision as a condition of mitigation.

DECISION:

The appeal is DENIED.

ORDER:

As stipulated by the Applicant, the following condition of mitigation shall be imposed upon the project:

1. The Applicant shall test on-site soils for contamination by hydrocarbons and chlorinated solvents near the western edge of the proposed hangar facility footprint, as approved by DDES.

ORDERED this 31st day of October, 2000.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 31st day of October, 2000, to the following parties and interested persons:

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MINUTES OF THE OCTOBER 19, 2000 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. B00M0154 – CLASSIC HELICOPTER:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department was Fereshteh Dehkordi. Participating in the hearing and representing the Applicant was Attorney James Greenfield and Applicant Karen Walling. Participating in this hearing and representing the Appellant were Mike Rees and William Keithan of the Seattle Council on Airport Affairs. Other participants in this hearing were David Ketchum, Michael Yantis, Cynthia Stewart and Robert Christianson.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner, dated October 19, 2000
- Exhibit No. 2 Determination of Non-significance (DNS), issued June 20, 2000
- Exhibit No. 3 Environmental Checklist, dated December, 1999
- Exhibit No. 4 Notice of appeal of DNS by Seattle Council on Airport Affairs (SCAA), received July 5, 2000
- Exhibit No. 5 Statement of Appeal by SCAA, received July 14, 2000
- Exhibit No. 6 Site Plan
- Exhibit No. 7 SEPA file
- Exhibit No. 8 Classic Helicopter Proposed Hangar Project Noise Report, dated October, 2000
- Exhibit No. 9 Classic Helicopter Corp. Proposed Hangar Noise Assessment Testimony
- Exhibit No. 10 Noise Certification Requirements for Helicopters, FAA Advisory Circular AC-36-1G
- Exhibit No. 11 Notebook containing numerous references, submitted by Appellant
- Exhibit No. 12 Chapter 7 of the 1987 Master Development Plan, King County International Airport
- Exhibit No. 13 Newspaper article, submitted by Appellant
- Exhibit No. 14 Copy of Motion 7029, approving the King County 1986 Airport Master Development Plan (admitted pursuant to administrative continuance on October 24, 2000)

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